

103^D CONGRESS
2^D SESSION

S. 2423

To amend the provisions of title 17, United States Code, to provide for the auction of certain copyrights to financially support the National Endowment for the Arts and the National Endowment for the Humanities, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 25 (legislative day, AUGUST 18), 1994

Mr. DODD (for himself, Mr. BINGAMAN, and Mr. METZENBAUM) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To amend the provisions of title 17, United States Code, to provide for the auction of certain copyrights to financially support the National Endowment for the Arts and the National Endowment for the Humanities, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Arts Endowing the
5 Arts Act of 1994”.

1 **SEC. 2. COPYRIGHT AUCTION FOR THE NATIONAL ENDOW-**
 2 **MENTS FOR THE ARTS AND HUMANITIES.**

3 (a) IN GENERAL.—The provisions of title 17, United
 4 States Code, are amended by adding after chapter 9 the
 5 following new chapter:

6 **“CHAPTER 10—AUCTION OF CERTAIN**
 7 **COPYRIGHTS FOR THE NATIONAL EN-**
 8 **DOWMENT FOR THE ARTS AND THE**
 9 **NATIONAL ENDOWMENT FOR THE HU-**
 10 **MANITIES**

“Sec.

“1001. Definitions.

“1002. Copyrights affected.

“1003. Arts and Humanities Copyright Board.

“1004. Auction procedures.

“1005. Registration and issuance of certificate for auction copyright.

“1006. Limitation on the liability of the United States.

“1007. Original copyright not affected by auction.

“1008. National Endowments for the Arts and Humanities Copyright Trust
 Fund.

11 **“§ 1001. Definitions**

12 “For purposes of this chapter—

13 “(1) the term ‘auction copyright’ means a copy-
 14 right which is acquired under the provisions of this
 15 chapter;

16 “(2) the term ‘Board’ means the Arts and Hu-
 17 manities Copyright Board established under section
 18 1003; and

1 “(3) the term ‘Fund’ means the National En-
2 dowments for the Arts and Humanities Copyright
3 Trust Fund established under section 1008.

4 **“§ 1002. Copyrights affected**

5 “The provisions of this chapter apply to any copy-
6 right in a—

7 “(1) literary work;

8 “(2) sound recording;

9 “(3) work of visual art;

10 “(4) pictorial, graphic, and sculptural work; or

11 “(5) motion picture.

12 **“§ 1003. Arts and Humanities Copyright Board**

13 “(a) ESTABLISHMENT.—There is established the
14 Arts and Humanities Copyright Board within the Library
15 of Congress.

16 “(b) MEMBERSHIP.—The Board shall be composed of
17 9 members, appointed by the President, of whom—

18 “(1) 1 shall be selected upon the recommenda-
19 tion of the Chairman of the National Endowment
20 for the Arts;

21 “(2) 1 shall be selected upon the recommenda-
22 tion of the Chairman of the National Endowment
23 for the Humanities;

24 “(3) 1 shall be selected upon the recommenda-
25 tion of the Register of Copyrights;

1 “(4) 1 shall be selected upon the recommenda-
2 tion of the Majority Leader of the Senate;

3 “(5) 1 shall be selected upon the recommenda-
4 tion of the Minority Leader of the Senate;

5 “(6) 1 shall be selected upon the recommenda-
6 tion of the Majority Leader of the House of Rep-
7 resentatives;

8 “(7) 1 shall be selected upon the recommenda-
9 tion of the Minority Leader of the House of Rep-
10 representatives; and

11 “(8) 2 shall represent the arts community and
12 be notable for contributions to excellence in their
13 fields.

14 “(c) CHAIRMAN.—The Board shall select a chairman
15 from the members of the Board.

16 “(d) QUORUM.—A majority of the members of the
17 Board shall constitute a quorum.

18 “(e) FUNCTIONS.—The Board shall select copyrights
19 in works for auction and conduct auctions as provided
20 under this chapter.

21 “(f) COMPENSATION.—The members of the Board
22 shall receive compensation at the rate payable for a posi-
23 tion at level V of the Executive Schedule under section
24 5316 of title 5 for each day in the actual performance
25 of duties for the Board.

1 “(g) TRAVEL EXPENSES.—The members of the
 2 Board shall be allowed travel expenses, including per diem
 3 in lieu of subsistence, at rates authorized for employees
 4 of agencies under subchapter I of chapter 57 of title 5
 5 while away from their homes or regular places of business
 6 in the performance of services for the Board.

7 “(h) SPECIAL GOVERNMENT EMPLOYEES.—A mem-
 8 ber of the Board shall be a special Government employee
 9 as for purposes of sections 203, 204, 207, 208, and 209
 10 of title 18.

11 **“§ 1004. Auction procedures**

12 “(a) SELECTION OF COPYRIGHTS FOR AUCTION.—
 13 During the first week of January and the first week of
 14 July of each year, the Board shall conduct an auction of
 15 any copyright described under section 1002 selected by the
 16 Board. The Board may select a copyright for an auction
 17 under this chapter if—

18 “(1) the term of the copyright—

19 “(A) shall expire within 6 months after the
 20 date of the auction of the copyright; and

21 “(B) is not subject to renewal and exten-
 22 sion under this title; or

23 “(2)(A) the term of the copyright—

24 “(i) shall expire within 6 months after the
 25 date of the auction of the copyright; and

1 “(ii) is subject to renewal and extension
2 under this title; and

3 “(B) the owner of the copyright has not—

4 “(i) registered for a renewal and extension
5 of the term of such copyright; or

6 “(ii) submitted written notice to the Board
7 or the Copyright Office of an intent to renew
8 and extend the term of such copyright and the
9 Board determines that such term is subject to
10 renewal and extension.

11 “(b) COPYRIGHTS FOR AUCTION SELECTED UPON
12 BIDDER’S INITIATIVE.—The Board shall select a copy-
13 right for an auction if the Board—

14 “(1) receives a bid for a copyright that meets
15 all of the requirements for selection under this sec-
16 tion within such period as determined by the Board;
17 and

18 “(2) determines the bid is of a sufficient mini-
19 mum amount for the copyright.

20 “(c) COPYRIGHTS EXCLUDED FROM AUCTION.—The
21 Board may not auction a copyright in any work—

22 “(1) in which a person owned a copyright;

23 “(2) in which the term of such copyright ex-
24 pired without renewal and extension; and

25 “(3) that entered the public domain.

1 “(d) NOTIFICATION.—(1) No later than 45 days be-
 2 fore the date of an auction, the Board shall publish in
 3 the Federal Register—

4 “(A) the date of the auction;

5 “(B) a description of the copyrights and works
 6 relating to such copyrights to be auctioned;

7 “(C) a description of all works—

8 “(i) in which a copyright shall be auc-
 9 tioned; and

10 “(ii) for which a bid has been submitted;
 11 and

12 “(D) the minimum bids set by the Board.

13 “(2) The Board may take such other actions as nec-
 14 essary to give public notice of the information described
 15 under paragraph (1).

16 “(e) AUCTION COPYRIGHT BIDS.—(1) The Board
 17 shall set a minimum amount for each bid for a copyright
 18 to be auctioned. If no bid is submitted to the Board equal
 19 to or greater than the minimum amount set for a copy-
 20 right in any work, no auction copyright may be issued for
 21 the work.

22 “(2) Each bid shall—

23 “(A) be sealed;

24 “(B) be submitted during such period as the
 25 Board may determine; and

4 “(3) A person shall be the successful bidder on a
5 copyright if such person—

6 “(A) submits the highest bid on such copyright;

7 “(B) deposits the total amount of the submitted
8 bid in the Fund; and

9 “(C) complies with such terms and conditions
10 as the Board may require.

11 “(4)(A) The Board shall pay to each person who sub-
12 mitted an unsuccessful bid all amounts deposited in the
13 Fund under paragraph (2)(C) with interest at a rate de-
14 termined under subparagraph (B).

15 “(B) For any 12-month period beginning on July 1
16 and ending on June 30 the rate determined under this
17 subparagraph is determined on the preceding June 1 and
18 is equal to the bond equivalent rate of 52-week Treasury
19 bills auctioned at the final auction held prior to such
20 June 1.

21 **“§ 1005. Registration and issuance of certificate for**
22 ****auction copyright****

23 “(a) NOTIFICATION TO COPYRIGHT OFFICE.—The
24 Board shall determine the person making the successful

1 bid for a copyright in a work at an auction and notify
2 the Copyright Office.

3 “(b) REGISTRATION AND ISSUANCE OF CERTIFI-
4 CATE.—After receiving notification from the Board and
5 payment of fees for a copyright claim and registration
6 under section 708(a)(1) by the person making the success-
7 ful bid at auction, the Register of Copyrights shall register
8 a copyright claim and issue a certificate of registration
9 to such person in accordance with section 410.

10 “(c) DURATION OF TERM.—The term of an auction
11 copyright in a work shall be for 20 years and shall begin
12 on the date following the date of the expiration of the term
13 of the copyright in such work last held under the provi-
14 sions of this title (other than this chapter).

15 “(d) NONRENEWAL OF AUCTION COPYRIGHT.—An
16 auction copyright may not be renewed or extended.

17 **“§ 1006. Limitation on the liability of the United**
18 **States**

19 “If a person acquires an auction copyright in a work
20 and the Copyright Royalty Tribunal or a court of the
21 United States later determines that such person is not the
22 owner of such copyright or that such copyright is invalid
23 or infringes on another copyright in such work, the liabil-
24 ity of the United States shall be limited to—

1 “(1) all amounts that such person deposited in
2 the Fund for the auction copyright; and

3 “(2) interest on such amounts at the rate deter-
4 mined under section 1004(e)(4)(B).

5 **“§ 1007. Original copyright not affected by auction**

6 “The auction of a copyright in any work under this
7 chapter shall have no effect on—

8 “(1) any other copyright in such work; or

9 “(2) the rights or privileges of any owner, hold-
10 er, heir, or assignee of any other copyright in such
11 work.

12 **“§ 1008. National Endowments for the Arts and Hu-**
13 **manities Copyright Trust Fund**

14 “(a) ESTABLISHMENT.—There is established the Na-
15 tional Endowments for the Arts and Humanities Copy-
16 right Trust Fund in the Treasury of the United States.

17 “(b) DEPOSITS.—The Fund shall consist of all
18 amounts deposited by the Board from auction bids and
19 payments under section 1004 and any interest earned on
20 investment of amounts in the Fund under subsection
21 (d)(2) of this section.

22 “(c) APPROPRIATIONS FROM FUND.—The amounts
23 in the Fund shall remain in the Fund without fiscal year
24 limitation and shall be available for annual appropriation
25 by the Congress for—

1 “(1) the support of the National Endowment
2 for the Arts and the National Endowment for the
3 Humanities; and

4 “(2) the administrative costs of carrying out
5 this chapter.

6 “(d) INVESTMENT OF FUNDS.—(1) It shall be the
7 duty of the Secretary of the Treasury to invest such por-
8 tion of the Fund as is not, in the Secretary’s judgment,
9 required to meet current withdrawals. Such investments
10 may be made only in interest-bearing obligations of the
11 United States or in obligations guaranteed as to both prin-
12 cipal and interest by the United States. For such purpose,
13 such obligations may be acquired—

14 “(A) on original issue at the issue price, or

15 “(B) by purchase of outstanding obligations at
16 the market price.

17 The purposes for which obligations of the United States
18 may be issued under chapter 31 of title 31, of the United
19 States Code, are hereby extended to authorize the issuance
20 at par of special obligations exclusively to the Fund. Such
21 special obligations shall bear interest at a rate equal to
22 the average rate of interest, computed as to the end of
23 the calendar month next preceding the date of such issue,
24 borne by all marketable interest-bearing obligations of the
25 United States then forming a part of the Public Debt; ex-

cept that where such average rate is not a multiple of one-eighth of 1 percent, the rate of interest of such special obligations shall be the multiple of one-eighth of 1 percent next lower than such average rate. Such special obligations shall be issued only if the Secretary of the Treasury determines that the purchase of other interest-bearing obligations of the United States, or of obligations guaranteed as to both principal and interest by the United States on original issue or at the market price, is not in the public interest.

“(2) Any obligation acquired by the Fund (except special obligations issued exclusively to the Fund) may be sold by the Secretary of the Treasury at the market price, and such special obligations may be redeemed at par plus accrued interest.

“(3) The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to and form a part of the Fund.”.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for title 17, United States Code, is amended by adding after the item relating to item 9 the following new item:

“10. Auction of certain copyrights for the National Endowment for the Arts and the National Endowment for the Humanities 1001.”.

1 **SEC. 3. EFFECTIVE DATE.**

2 (a) IN GENERAL.—Except as provided under sub-
3 section (b), the provisions of this Act and the amendments
4 made by this Act shall take effect 30 days after the date
5 of the enactment of this Act.

6 (b) FIRST AUCTION.—The Arts and Humanities
7 Copyright Board established under chapter 10 of title 17,
8 United States Code, as added by this Act, shall determine
9 the date of the first copyright auction, except such auction
10 shall occur—

11 (1) during the first week of January or July;
12 and

13 (2) no later than 18 months after the date of
14 the enactment of this Act.

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